

Snell & Wilmer
LLP
LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200

Leon F. Mead II
Nevada Bar No. 5719
Robin E. Perkins
Nevada Bar No. 9891
Brian M. Gragg
Nevada Bar No. 13134
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway
Suite 1100
Las Vegas, Nevada 89169
Telephone: 702.784.5200
Facsimile: 702.784.5252
Email: lmead@swlaw.com
rperkins@swlaw.com
bgragg@swlaw.com

Attorneys for Jaynes Corporation and Western Surety Company

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES FOR THE USE AND
BENEFIT OF AGATE STEEL, INC.;
AGATE STEEL, INC., an Arizona
corporation,

Plaintiffs,

vs.

JAYNES CORPORATION, a New Mexico
corporation; WESTERN SURETY
COMPANY, a South Dakota corporation,

Defendants.

JAYNES CORPORATION, a New Mexico
corporation,

Third-Party Plaintiff,

vs.

AMERICAN STEEL CORPORATION, a
Nevada corporation, THE OHIO
CASUALTY INSURANCE COMPANY, a
foreign corporation,

Third-Party Defendants.

CASE NO. 2:13-cv-01907-APG-NJK

**STIPULATION AND ~~PROPOSED~~
ORDER COMPELLING PRIVATE
MEDIATION AND STAY AND
CONTINUATION OF DISCOVERY
PENDING MEDIATION**

(Eighth Request)

Defendant/Third-Party Plaintiff Jaynes Corporation, Inc. (“Jaynes”) and Defendant Western Surety Company (“Western”); Plaintiff United States for the Use and Benefit of Agate Steel, Inc. (“Agate”); and Third-Party Defendants American Steel Corporation (“American Steel”) and the Ohio Casualty Insurance Company (“Ohio”), by and through their respective counsel (collectively the “Parties”), hereby file this Stipulation and [Proposed] Order Compelling Private Mediation and Stay and Continuation of Discovery Pending Mediation. This request complies with Local Rule (“LR”) 6-1, 6-3, 7-1, and 26-4, and is based on good cause because the litigation of this matter will be best served by the proposed extension.

I. GOOD CAUSE FOR MEDIATION AND CONTINUATION OF DISCOVERY

The Parties have been actively conducting discovery in this matter, and as a result believe a private mediation would be beneficial to and potentially dispositive of the claims, crossclaims, and counterclaims asserted in this litigation. As this Court is aware, the Parties were previously not in agreement regarding participation in a private mediation. However, after additional discussions, the Parties are now all in agreement that mediation will be valuable and beneficial in attempting to resolve this matter.

The Parties have scheduled a mediation on August 14, 2015 in Phoenix, Arizona, with a mediator that all Parties agreed upon. August 14 is the earliest available setting with that mediator.

In an effort to conserve fees and focus upon preparation for mediation, the Parties additionally request that discovery be continued until September 14, 2015, which is thirty (30) days after the mediation. The Parties acknowledge that in this Court’s recent order denying the joint motion to compel mediation, the Court ordered that no additional discovery continuance will be granted. [Doc. No. 94.] The Parties recognize and appreciate the importance of actively moving this matter forward. However, in the event this matter is not resolved, the Parties require at least thirty days to organize schedules, specifically the witnesses and experts’ schedules, and prepare for the remaining depositions that are necessary. Likewise, the Parties request the dispositive motion deadline be continued until October 14, 2015, which is thirty days after the requested close of discovery pursuant to LR 26-1(e). In the event mediation is unsuccessful, the

Parties will ensure that discovery is completed and dispositive motions are filed within the requested continued deadlines.

As to the request to continue discovery, this request complies with Local Rule (“LR”) 6-1 and 26-4, and is based on good cause because the litigation of this matter will be best served by the proposed extension. This request is made less than twenty-one days before the discovery deadline, July 21, 2015. However excusable neglect exists here because, as the Court knows, the Parties have been attempting for some time to reach an agreement regarding mediation. Even after this Court’s recent order denying the joint motion to compel mediation [Doc. No. 94], the Parties continued to discuss mediation and efforts to resolve this matter. As a result of a number of factors, the Parties only came to an agreement regarding mediation today, the same day this stipulation is filed. In hopes of reaching an agreement, the Parties had already obtained possible mediation dates, so that, if an agreement was reached, this stipulation could be filed right away, providing the Court with a scheduled mediation date.

Federal Rule of Civil Procedure 1 states that these rules “should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.” The Parties are now all in agreement as to participation in mediation. Moreover, mediation and a short continuance of discovery will assist in the just, speedy, and inexpensive determination of this matter. Accordingly, the Parties request this stipulation and proposed order be granted.

II. DISCOVERY COMPLETED TO DATE

To date, the Parties have completed the following discovery:

- The Parties attended the initial FRCP 26(f) conference on January 23, 2014.
- Jaynes and Western made their initial FRCP 26(a)(1) disclosure on February 22, 2014 along with supplemental disclosures on September 19, 2014, November 7, 2014, December 19, 2014, December 22, 2014, February 6, 2015 and July 8, 2015.
- Agate made its initial FRCP 26(a)(1) disclosure on February 24, 2014, along with supplemental disclosures on November 4, 2014 and November 5, 2014.
- American Steel and Ohio issued their initial FRCP 26(a)(1) disclosure on February

24, 2014, along with supplemental disclosures on June 4, 2014, July 21, 2014, September 12, 2014, December 26, 2014, February 5, 2015, February 26, 2015, April 21, 2015 and June 4, 2015.

- Agate served written discovery on Jaynes and American Steel on or about June 13, 2014 and June 17, 2014.
- American Steel served responses to Agate's written discovery on or about July 16, 2014.
- American Steel and Ohio served written discovery on Jaynes on or about July 18, 2014.
- Jaynes served responses to Agate's written discovery on or about July 21, 2014.
- Jaynes served responses to American Steel's written discovery on or about August 20, 2014 and supplemental responses on September 19, 2014.
- Jaynes served written discovery on Agate and American Steel on September 16, 2014.
- American Steel served written discovery on Jaynes on October 24, 2014.
- American Steel served responses to Jaynes' written discovery on November 4, 2014.
- Jaynes served responses to American Steel's written discovery on November 26, 2014.
- Jaynes served its expert disclosure on September 15, 2014, and its rebuttal exporter disclosure on December 22, 2014.
- American Steel served its expert disclosure on September 8, 2014.
- Jaynes has taken depositions of Agate's relevant fact witnesses on April 28, 2015 and April 29, 2015.
- Jaynes has noticed the depositions of American Steel's relevant fact witnesses for July 21, 2015, July 22, 2015 and July 23, 2015.
- The Parties are currently coordinating schedules with counsel and all necessary witnesses, who are in various states, to set all remaining depositions.

1 **III. DISCOVERY TO BE COMPLETED**

2 The Parties anticipate that the following discovery still needs to be completed:

- 3 • Depositions of American Steel and Jaynes' respective corporate representatives.
- 4 • Depositions of additional witnesses to be designated.
- 5 • Expert depositions.
- 6 • Any additional discovery that may be necessary.

7 **IV. PROPOSED NEW DEADLINES**

8 A. **Mediation Date: August 14, 2015**

9 B. **Deadline to Conclude All Discovery:**

10 Currently: July 21, 2015

11 Proposed: September 14, 2015

12 B. **Deadline for Parties to File Dispositive Motions:**

13 Currently: August 20, 2015

14 Proposed: October 14, 2015

15 C. **Deadline to File Pretrial Order:**

16 Currently: September 21, 2015

17 Proposed: November 16, 2015

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Snell & Wilmer
L.L.P.
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V. CONCLUSION

For the foregoing reasons, the Parties respectfully request that the Court grant their request to stay and continue discovery pending mediation and continue discovery.

Dated: July 9, 2015

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SNELL & WILMER L.L.P.

LAW OFFICES OF TIMOTHY D. DUCAR,
PLC

By: /s/ Robin E. Perkins

Leon F. Mead II, Esq.
Nevada Bar No. 5719
Robin E. Perkins, Esq.
Nevada Bar No. 9891
Bryan M. Gragg, Esq.
Nevada Bar No. 13134
3883 Howard Hughes Parkway
Suite 1100
Las Vegas, NV 89169
Telephone: (702) 784-5200
Facsimile: (702) 784-5252
*Attorneys for Jaynes Corporation and
Western Surety Company*

By: /s/ Timothy D. Ducar

Timothy D. Ducar, Esq.
Nevada Bar No. 10572
P.O. Box 72645
Phoenix, Arizona 85050
Telephone: (480) 502-2119
Facsimile: (480) 452-0900
*Attorneys for United States for Use and
Benefit of Agate Steel, Inc. and Agate
Steel, Inc.*

Dated: July 9, 2015

CHEIFETZ IANNITELLI MARCOLINI, P.C.

By: /s/ Claudio E. Iannitelli

Claudio E. Iannitelli, Esq.
(Admitted Pro Hac Vice)
111 West Monroe Street, 17th Floor
Phoenix, AZ 85003
Telephone: (602) 952-6000
Facsimile: (602) 952-7020
*Attorneys for United States for Use and
Benefit of American Steel Corporation;
American Steel Corporation; and the Ohio
Casualty Insurance Corporation*

ORDER

IT IS SO ORDERED.

DATED this 10th _ day of July, 2015.


United States Magistrate Judge